

an agreement. During the initial inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BXA will consult with the affected facility on the contents of the agreements and take facility comments into consideration during negotiations. The Department of Commerce will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BXA will give consideration to such comments prior to approving final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and unscheduled discrete organic chemical facilities are concluded, as appropriate, with the OPCW in coordination with the Department of Commerce.

(c) *Format and content.* Schedule 1 and Schedule 2 model facility agreements are included in Supplement No. 2 and Supplement No. 3 to this part. These model facility agreements implement the general provisions of the Convention pertaining to inspections, including health and safety procedures, confidentiality of information, media and public relations, information about the facility, inspection equipment, pre-inspection activities, conduct of the inspection (including access to and inspection of areas, buildings and structures, access to and inspection of records and documentation, arrangements for interviews of facility personnel, photographs, sampling, and measurements), and logistical arrangements for the inspectors, such as communications and lodging. Attachments to the facility agreements will provide

site-specific information such as working hours, special safety and health procedures, as well as site-specific agreements as to documents and records to be provided, specific areas of a facility to be inspected, site diagrams, sampling, photography, interview procedures, use of inspection equipment, procedures for protection of confidential business information, and administrative arrangements.

(d) *Further information.* For further information about facility agreements, please write or call: Inspection Management Team, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Room 6087B, Washington, D.C. 20230–0001, Telephone: (202) 482–6114.

#### §716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

#### §716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWC, however, such monitoring is not anticipated. The U.S. Government will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

#### §716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BXA within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs

**Bureau of Export Administration, Commerce**

**Pt. 716, Supp. 2**

of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BXA on company letterhead at the address given in

§716.6(d), with the following notation: “Attn: Report of inspection-related costs.”

**SUPPLEMENT NO. 1 TO PART 716—NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS**

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	24 hours prior to arrival at the point of entry.	48 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.
Duration of inspection ..	As specified in facility agreement.	96 hours .....	24 hours .....	24 hours.
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry.			
Duration of Challenge inspection*.	84 hours.			

\*See part 717 of this subchapter.

**SUPPLEMENT NO. 2 TO PART 716—SCHEDULE 1 MODEL FACILITY AGREEMENT**

Draft Model Agreement specifying the general form and content for facility agreements to be concluded pursuant to Verification Annex, Part VI, paragraph 31 (other facilities).

Facility Agreement between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-site Inspections at the \_\_\_\_\_ Facility Located at the \_\_\_\_\_.

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as “Organization”, and the Government of the United States of America, hereinafter referred to as “inspected State Party”, both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 3 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, hereinafter referred to as “Convention”, at \_\_\_\_\_ (insert name of the facility, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as “facility”.

**Section 1. General Provisions**

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the facility pursuant to paragraph 3 of Article VI of the Convention and

in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.<sup>1</sup> In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the facility are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 23 or 30 of Part VI of the Verification Annex, whichever applies.

5. The inspection team shall consist of no more than \_\_\_\_\_ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the facility, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

<sup>1</sup>Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.